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Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

ANDREW SHERMAN,)	CV 08-98-BLG-RFC-CSO
)	
Plaintiff,)	
vs.)	
)	COMPLAINT
UNITED STATES OF AMERICA,)	
)	
Defendant.)	
)	

Plaintiff Andrew Sherman alleges as follows:

1. Plaintiff Andrew Sherman is a citizen of the State of Montana and a resident of Poplar, Roosevelt County, Montana.
2. Andrew Sherman is an enrolled member of the Spirit Lake Dakota tribe.
3. This court has jurisdiction over this cause of action pursuant to the Federal Tort Claims Act, 28 U.S.C. 2671, *et seq.*, because the claim arises from conduct of federal government agents and Plaintiff has exhausted administrative remedies.
4. This Court has exclusive jurisdiction over tort claims brought against the United States pursuant to 28 U.S.C. § 1346(b).

- 1 5. Andrew filed a Federal Tort Claim Act claim on December 17, 2007. The government
2 has not acted on the claim, therefore Andrew's claim is now ripe for adjudication.
- 3 6. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(e) and 1402(b). Venue also
4 is proper in this division under L.R. 1.11, referencing MCA § 25-2-122, because the
5 United States is the Defendant here. *See Rotzler v. United States*, CV 07-115-M-DWM,
6 slip op. at 4-7 (D. Mont. Jan. 24, 2008).
- 7 7. In September and October of 2005 Andrew presented to the Indian Health Service (IHS)
8 Clinic in Poplar with pain that was determined to be gall stones.
- 9 8. On October 26, 2005, Dr. Flynn sent a referral for Andrew for the IHS to have a
10 cholecystectomy performed.
- 11 9. The IHS never referred Andrew for a cholecystectomy.
- 12 10. Andrew's gall bladder became gangrenous and ruptured, and Andrew underwent an
13 emergency cholecystectomy in January of 2006.
- 14 11. Andrew developed pancreatitis and other complications.
- 15 12. IHS health care providers were negligent and violated the standard of care in failing to
16 refer Andrew for a timely cholecystectomy. The refusal by IHS to refer Andrew for a
17 cholecystectomy caused Andrew's condition to worsen considerably, and eventually
18 caused many more complications and required a more intensive course of treatment than
19 if Andrew had been referred for a cholecystectomy in a timely manner.
- 20 13. As a result of the negligence of IHS health care providers, Andrew has undergone
21 extensive surgeries and treatments to repair and mitigate the harm caused by the IHS
22 health care providers. Andrew has also suffered from other complications including
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1 without exclusion continuing pain, suffering, pancreatitis, loss of course of life, and loss
2 of employment.

3
4 **WHEREFORE**, Plaintiff Andrew Sherman demands judgment against the Defendant as
5 follows:
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- 7 1. For judgment in such amounts as shall be proven at the time of trial.
- 8 2. For an award of attorney's fees and costs as provided by any applicable provision
9 of law.
- 10 3. For such other and further relief as the Court deems just and equitable.

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12 DATED this 26th day of August, 2008.

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15 By: /s/ Timothy M. Bechtold
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